



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Tuesday the 4th day of November 2021)

APPEAL No. 619/2019

Old No. ATA 378 (7) 2013

Appellant : M/s. Kolahalamedu Estate,
Joonktollee Tea and Industries Ltd.
Formerly known as Cochin Malabar
Estates and Industries Ltd,
Pullikanam.P.O.,
Vagamon, Idukki – 685 503

By M/s. Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 28/07/2021
and this Tribunal-cum-Labour Court on 04/11/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/KTM/2964/
PD/2012/175 dated 10/04/2013 assessing damages under
Section 14B of EPF and MP Act (hereinafter referred to as 'the

Act') for belated remittance of contribution for the period from 12/2000 – 02/2002. Total damages assessed is Rs.3,71,711/- (Rupees three lakh seventy one thousand seven hundred and eleven only)

2. Cochin Malabar Estates and Industries Limited is a Public Limited Company registered under the Companies Act 1956. The company owns two rubber estates in Trichur district and one tea estate in Idukki district, the present appellant. The plantation industry is facing a crisis since 1997 and many estates in an around the appellant were closed. Due to the financial crisis, the appellant was incurring losses from 1997 – 1998. The accumulated loss of the appellant company during the period upto 2003 – 2004 was Rs. 33,59,91,003/-. In spite of the heavy losses, the appellant was paying wages to the employees. Due to the financial crisis, the payment of wages to the employees for the period from April 1999 to April 2006 was delayed and consequently the remittance of contribution was also delayed. The copies of the balance sheet of the appellant company for the year 1999 – 2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004 are

produced and marked as Annexure – A1 series. The appellant received a notice from the respondent dated 14.12.2012 to show cause why damages as stipulated under Sec 14B of the Act shall not be imposed. The respondent offered the appellant an opportunity for personnel hearing. The appellant entered appearance and produced a copy of the judgement of the Hon'ble High Court of Kerala in W.P.(C) No 7539 of 2006 passed in the case of a sister concern of the appellant company. A copy of the said judgement is produced and marked as Annexure A2. Without considering any of the contention of the appellant, the respondent issued the impugned order. The respondent authority failed to exercise his discretion available under Sec 14B of the Act. The Hon'ble High Court of Kerala in ***Harrisons Malayalam Limited Vs Regional Provident Fund Commissioner***, 2012 (1) KHC 243 held that financial constraints is a mitigating circumstance for reducing damages under Sec 14 B of the Act. In ***Indian Telephone Industries Ltd. Vs Assistant Provident Fund Commissioner***, WP(C) No.32515 of 2005, the Hon'ble High Court of Kerala held that the authority exercising powers under Sec 14B has discretion to reduce damages and is not

bound by any rigid formula unless there is deliberate act of defiance of law or contumacious conduct on the part of the establishment.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant delayed remittance of provident fund contribution for the period from 12/2000 to 02/2002. Hence a notice dated 14.12.2012 was issued to the appellant under Sec 14B of the Act. The appellant was also given an opportunity for personnel hearing on 27.12.2012. A representative of the appellant attended the hearing and pleaded that the proceedings may be dropped in view of the financial crisis faced by them. The representative also produced a copy of the Judgement of the Hon'ble High Court of Kerala in W.P.(C) No.7539/2006. It is a statutory obligation on the part of the appellant to remit the contribution in time and any violation will attract damages under Sec 14B read with Para 32 A of the Scheme. Under Para 38 of EPF Scheme, the appellant is liable to pay both the contributions, the employer as well as the employees within 15 days of the close

of every month. Since the appellant failed to remit contributions as required under the statute and violated the provisions of the Scheme, they are liable to remit damages under Sec 14B of the Act. The main contention of the appellant is that the delay in remittance was due to the financial constraints of the appellant establishment. The Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills VS RPFC** 1982 LAB LC 1422 held that paragraph 38 of the Scheme obliges the employer to make the payment within 15 days of close of every month and Para 30 cast an obligation on the employer to pay both the contributions payable by himself and on behalf of the member employed by him, in the first instance. With regard to the judgement in W.P.(C)7539/2006, it is pointed out that the respondent organisation has moved SLP before the Hon'ble Supreme Court of India in similar cases. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India** 1979 Lab. IC.1261 held that Sec 14B is meant to penalise the defaulting employer and is a warning to employers in general not to commit any breach of statutory requirements under Sec 6 of the Act. The Hon'ble Supreme

Court also held that there is nothing in the Section to show that damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme.

4. Admittedly there was a delay in remittance of contribution by the appellant during the relevant point of time. According to the appellant, the delay in remittance of contribution was due to the financial constraints of the appellant establishment. To substantiate their claim of financial difficulty, the appellant produced two page extracts of balance sheet for the period from March 2000 – March 2004. It has been clarified in many cases that it is rather difficult to analyse the financial position of an establishment from two page extract which only shows the current assets and current liability and whether the establishment is under profit or loss. The learned Counsel for the respondent pointed out that the balance sheet itself is not a reliable document to decide the financial status of an establishment unless the figures therein are properly proved through evidence before the respondent authority. In ***Aluminium Corporation Vs Their Workmen and Others***, 1963 2 LLJ 629 SC, the Hon'ble Supreme Court

held that the mere statements in the balance sheets as regards current assets and current liability cannot be taken as sacrosanct. Correctness of the figures as shown in the balance sheet itself are to be established by proper evidence in court by those responsible for preparing the balance sheet or by other competent witnesses. As already pointed out, the documents produced herein are incomplete and therefore it is not possible to evaluate the financial position of appellant establishment. It is also seen that the balance sheet pertains to Cochin Malabar Estates and Industries Limited which is a group of estates and therefore it is not possible to evaluate the actual financial position of the appellant estate. The appellant also claimed that there was delay in paying wages to the employees. However the appellant failed to substantiate their claim. The learned Counsel for the respondent pointed out that unless it is shown through documentary evidence that there was delay in payment of wages, it is to be presumed that the wages were paid in time. The employee's share of contribution deducted from the salary of the employees were also not paid by the appellant in time. Having committed an offence of breach of trust, the appellant cannot plead that

there was no mensrea in belated remittance of contribution atleast to the extent of employee's share of contribution which amounts to the 50% of the total contribution. Further Para 38 of EPF Scheme mandates that it is the responsibility of the appellant to remit both the contribution irrespective of the fact whether the wages are paid in time or not. The appellant pointed out that the Hon'ble High Court of Kerala in ***Cochin Malabar Estates Vs Assistant Provident Fund Commissioner*** W.P.(C) No. 20549 of 2008 pertaining to a sister concern of the appellant directed that the damages in that case shall be restricted to 25% of the amount claimed by the respondent. The learned Counsel for the respondent pointed out that the above judgment was based on the decision of the Hon'ble High Court of Kerala in ***Harrisons Malayalam Limited Vs Regional Provident Fund Commissioner and others***, 2012 (1) KHC 243. The respondent challenged the decision before the Division Bench of the Kerala High Court and later before the Hon'ble Supreme Court of India in SLP No. 21174/2015. The decision of the Hon'ble High Court of Kerala in W.P.(C) No. 7539/2006 was also challenged before the Hon'ble Supreme Court in

SLP No. 33832/2015 and the Hon'ble Supreme Court vide its order dated 06.05.2016 retained the percentage of damages however held that the question of law involved in these cases are kept open to be decided in an appropriate case. The judgement in Indian Telephone Industries Case (Supra) is also modified by the Division Bench in appeal.

5. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed under Sec 14B of the Act.

6. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 70% of the damages.

Sd/-
(V. Vijaya Kumar)
Presiding Officer